

COURT /TRIBUNAL FEES CONSULTATION – PLA RESPONSE

CONSULTATION QUESTION:	PLA RESPONSE
<p>1 Do you agree with the proposal to raise the maximum fee for starting proceedings for the recovery of money from £10,000?</p>	<p>No, the PLA strongly disagrees.</p> <p>As has been made clear in previous consultation responses, the PLA does not necessarily in principle object to enhanced fees, provided that:</p> <p>(a) the fees are "back loaded" not "front loaded", (b) the bands are set at the right level, and</p> <p>(c) the extra revenue generated by enhanced fees is reinvested in order to improve the service provided to court users.</p> <p>Turning to the first of these points, it would not be at all unusual for PLA members to bring claims of above £200,000. Those claims already attract a court fee of £10,000, and would attract an even higher fee if the currently proposals are brought into force. Claims of over £200,000 in the property sector are not necessarily the reserve of high net worth individuals or multi-national organisations. Dilapidations claims for commercial premises, for example, are often of this level or more. With property and rental values being what they are in many parts of the England and Wales, claims for unpaid rent or damage to property can also easily run into hundreds of thousands of pounds. For the claimant, cash flow and overdrafts may already be severely stretched as a result of the dispute. A Court fee of over £10,000 is likely to prove prohibitively expensive in many cases, particularly when multiplied across several floors of a multi-let property, or a portfolio of units.</p> <p>Of these claims, a fraction will get as far as trial. Many will settle very quickly after they are issued. Front loading of fees hardly encourages parties to settle claims through alternative dispute resolution. A party may find it impossible to persuade the other side to negotiate without first issuing proceedings; it may also have to issue to avoid being time barred. Having paid a hefty up front fee, a party may be more inclined to go through with those proceedings to get their "money's worth".</p> <p>In the PLA's view, it would be far better to charge enhanced fees in stages as the parties progress through court proceedings: a "pay as you go" approach. In particular, there is something to be said for the proposition that attending long hearings or</p>

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Turning to the second point, the PLA disagreed in the previous consultation that money claims valued at £200,000 warranted a court fee as high as £10,000. Likewise, claims in excess of £200,000 do not justify an issue fee of over £10,000. Sir Rupert Jackson concluded in his Review of Civil Litigation Costs: Final Report that: "The current level of court fees is too high and the current policy of full cost pricing is wrong in principle". Despite this, the April 2015 changes increases fees exponentially and the current proposals seek to do the same again. This contradicts the overriding objective of the Civil Procedure Rules of "enabling the court to deal with cases justly and at proportionate cost". Court fees of over £10,000 for a claim of £200,001 are disproportionate.

Also, there has been insufficient time for the full impact of the fee increases which came into effect in April 2015 to be felt. Early indications from our members are that, as it is, the £10,000 cap is too high and creating a real barrier to justice for some litigants. Unquestionably, this problem will be exacerbated further if the maximum fee is increased. Many litigants in person who cannot afford legal representation would be prevented from bringing a claim of over £200,000 if they had to pay a court fee of more than £10,000. This is preventing access to justice. For these reasons, again, the PLA would urge the government to reconsider.

Back loaded costs again have the advantage over an increase in issue fees as they can take into account the length of the final hearing: a high value claim may still only require a short hearing and limited use of court time, and vice versa.

Dealing finally with the third point, charging enhanced fees can only be justified if the excess revenue is reinvested in the court system to improve the service provided to court users. Unfortunately, PLA members regularly complain about the poor level of service they receive from the courts. Currently, the PLA is collating feedback from its members of their experience (positive and negative) with the courts for reporting back to HMCTS – <http://www.pla.org.uk/news/detail/HMCTS-feedback>.

The PLA is concerned that a benefit of cost based fees which stands to be lost is that courts are incentivised to keep the cost of providing the relevant service to the level of the fees. Once that relationship between fees and cost of service is broken, there will no longer be the same incentive for the courts to manage costs and run themselves efficiently.

Therefore, the PLA considers that enhanced fees should only be charged if the additional revenue is ring-fenced and there is a government commitment to reinvesting it in the civil justice system to improve services for court users. Otherwise, it is no more than a stealth tax. Taxing people for using the courts offends the principle of access to justice.

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<p>2 We would welcome views on whether the maximum fee for starting proceedings for the recovery of money should be increased: -to at least £20,000; or - to a higher amount; alternatively, do you believe that there should be no maximum fee for commencing a money claim?</p>	<p>The PLA does not agree that the maximum fee should be increased at all. It is already at a level likely to cause a barrier to justice and, for the reasons stated in response to Question 1, should not be increased further.</p>
<p>3 Do you agree with the proposal to exempt personal injury claims from the higher cap and that the maximum fee of £10,000 should continue to apply in these cases?</p>	<p>The PLA cannot comment on this question.</p>
<p>4 Do you agree that if the maximum fee for money claim is increased</p>	<p>The PLA does not object in principle to a proportionate increase in the disposable capital test for fee remissions and acknowledges that such an increase may help alleviate the oppressive effects of the proposed increases in issue fees for some people. However, it is clear that an increase in the disposal capital test will not solve the problems caused by an increase in issue fees to an unaffordable level. We note in particular that the remissions scheme is not available for companies, no matter how</p>

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<p>as proposed, the disposable capital test for a fee remission should also be amended so that the disposable capital threshold for a fee of £10,000 is increased to £20,000 and to £25,000 for a fee of £20,000?</p>	<p>small their size or modest their income.</p>
<p>5 Are there any other benefits or payments that should be excluded from the assessment of a person’s disposable capital for the purposes of a fee remission?</p>	<p>The PLA cannot comment on this question.</p>
<p>6 Do you agree with the proposal to uplift all civil fees not affected by one of the other specific proposals by 10%? Please give reasons for your answer.</p>	<p>No, the PLA does not agree.</p> <p>PLA members specialise in all aspects of property litigation including commercial, residential and agricultural property law. We are lawyers who come from a variety of firms in terms of size and location.</p> <p>The suggested increases are small, however they follow substantial increases in issue fees and general increases in the majority of all civil court fees. Litigants are therefore already paying significant fees in many other areas.</p> <p>As the Government is not offering any guarantee that the additional revenue generated by this proposed increase will be used to</p>

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	benefit the Court users who would be paying the increased fees, there is insufficient value being offered in return for the enhancement.
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<p>7 Do you agree with government’s proposal to increase the fees charged for proceedings in the first-tier tribunal (immigration and asylum chamber) as set out in table 1 above?</p>	<p>The PLA cannot comment on this question.</p>
<p>8 Do you agree with the proposal to introduce a 10% discount for applications lodged online?</p>	<p>The PLA does not object in principle to a discount for online applications.</p>
<p>9 Do you agree with the government’s proposal to revise the scheme of exemptions for the immigration and asylum chamber, including the proposal to exempt from fees those individuals appealing against a decision to revoke their</p>	<p>The PLA cannot comment on this question.</p>

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<p>refugee and humanitarian protection status?</p>	
<p>10 Do you agree that it is right to increase fees for immigration judicial review applications in the upper tribunal?</p>	<p>The PLA cannot comment on this question.</p>
<p>11 Do you agree with the government’s proposal to introduce a simple fee structure for most proceedings in the property chamber of £100 to start proceedings and £200 for a hearing?</p>	<p>The PLA does not object in principle to the introduction of a uniform fee structure for most proceedings in the property chamber, provided that the extra revenue generated by enhanced fees are reinvested in order to improve the service provided to court users.</p>
<p>12 Do you agree with the proposal to charge higher fees for leasehold enfranchisement and valuation cases, and specifically £400 to start proceedings and</p>	<p>The PLA does not agree with the proposal to charge higher fees for leasehold enfranchisement and valuation cases.</p> <p>The Government’s proposal to increase enfranchisement fees is ostensibly based on an assumption that the parties in such cases can afford to pay more due to the high value of the property which is the subject of the claim. However, this is skewed by some claims concerning high value properties on the Landed Estates and in Prime Central London; it is not necessarily reflected up and down the country generally. There is in fact a huge variety in values of enfranchisement applications, from bulk work worth a few thousand pounds per property (in which case the proposed fees would be immediately prohibitive) to those worth millions. A flat rate fee means that "a flat owner in Luton is subsidising an oligarch in Knightsbridge".</p>

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<p>£2,000 for a hearing?</p>	<p>the subject leases have 80 years or more unexpired and no marriage value is payable.</p> <p>In reality applications are made to the Tribunal as a protective measure in all save a handful of cases; if it is not made within the time limit the claim is deemed withdrawn. Higher fees therefore, appear to be a penalty on tenants for exercising a right that Parliament has sought fit to grant. Any fees, let alone higher fees, will be paid by tenants to protect their claims; landlords do not routinely bother to make applications and will therefore avoid the fees. The same will be true of hearing fees if these are to be met by the claimant rather than shared between the parties. The Tribunal has very limited costs shifting powers so the payee of the fees is likely to be unlikely to be able to recover from its opponent, regardless of the outcome of the proceedings.</p>
<p>13 Are there any other types of application in this chamber which you feel should be exempt from fees?</p>	<p>No. The PLA's view is that fees should be applied across the board and remain modest to maximise revenue but not be a barrier to access to justice.</p>
<p>14 Do you agree with the proposed fees for all proceedings in the general regulatory chamber: specifically £100 to start proceedings with a determination on the papers; and a further fee of £500 for a hearing?</p>	<p>The PLA cannot comment on this question.</p>
<p>15 Are there any proceedings in the general regulatory</p>	<p>The PLA cannot comment on this question.</p>

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<p>chamber that should be exempt from fees?</p>	
<p>16 Do you agree with the proposed fee structures we are proposing in the first-tier tribunal (tax chamber) and the upper tribunal (tax and chancery)?</p>	<p>The PLA cannot comment on this question.</p>
<p>17 Are there any types of applications or cases which you feel should be exempt from the fees?</p>	<p>The PLA cannot comment on this question.</p>
<p>18 We would welcome views on our assessment of the impacts of the proposals for further fee increases set out in chapters 3 and 4 on those with protected characteristics. We would in particular</p>	<p>The PLA cannot comment on this question.</p>

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welcome any data or evidence which would help to support these views.	
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